

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

ORDER

FRANCIS GUERRA, also known as “BF,”

10-CR-147 (S-4) (SLT)

Defendant.

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TOWNES, United States District Judge:

Defendant seeks to introduce recordings of exculpatory statements which he himself made to a cooperating witness, Reynold Maragni, which have been marked as Defendant’s Exhibit O. Defendant recognizes that these statements are hearsay, but asserts that they can nonetheless be admitted under the residual exception to the hearsay rule, codified at Rule 807 of the Federal Rules of Evidence, or pursuant to the “rule of completeness.”

These statements are inadmissible hearsay. First, in order to introduce the statements under Rule 807, defendant would have to demonstrate the statements have “circumstantial guarantees of trustworthiness” equivalent to the established hearsay exceptions set forth in Rule 803 and 804. Defendant has not done so. Rather, defendant merely suggests that it would be unfair to permit the government to use portions of the recording without permitting him to play other portions. However, the portions played by the government fit within an established exception to the hearsay rule. The statements defendant seeks to introduce do not.

Second, the “rule of completeness” is inapplicable here. While the government introduced portions of this same recording, those portions are unrelated to the portions defendant now seeks to introduce. Moreover, while defendant asserts that the portions played by the government were “taken out of context,” the portions that defendant seeks to use do not provide

the allegedly missing context. Accordingly, the “rule of completeness” does not justify introduction of these self-serving exculpatory statements.

SO ORDERED.

/s/

SANDRA L. TOWNES
United States District Judge

Dated: June 27, 2012
Brooklyn, New York